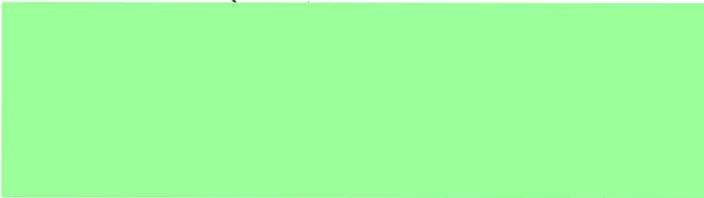




**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: **FEB 21 2013**

Office: LOS ANGELES

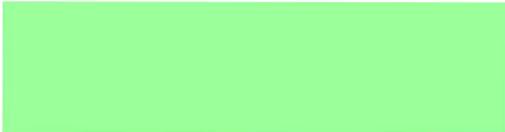
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you


Ron Rosenberg
Acting Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to have been born on November 17, 1983. His immigration file and identification documents, however, list November 17, 1982 as his date of birth. The applicant claims that he acquired U.S. citizenship automatically pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

The director denied the applicant's citizenship upon finding no evidence to suggest that the applicant's 1982 date of birth was incorrect. The director thus concluded that he did not benefit from the amended provisions of the CCA, which is only applicable to individuals who were under the age of 18 on February 27, 2001 (the CCA's effective date). The applicant sought reopening of the matter and submitted a birth certificate indicating 1983 as his year of birth. The director reopened the matter but denied the application finding that the birth certificate submitted by the applicant could not be authenticated. The director further noted that the applicant's passports, issued by the Afghan Embassy in 2004 and 2006, indicate 1982 as the year of the applicant's birth.

On appeal, the applicant submits a birth certificate issued by the consulate general of Afghanistan in Los Angeles purporting to establish that the applicant's year of birth is 1983.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." See *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). The CCA amended sections 320 and 322 of the Act, 8 U.S.C. §§ 1431 and 1433, and repealed section 321, 8 U.S.C. § 1432. At issue in this case is whether section 320 of the Immigration and Nationality Act (the Act), as amended by the CCA, is applicable.

Section 320 of the Act provides, in pertinent part, that

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen years.
 - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

The applicant's father became a U.S. citizen upon his naturalization in 1994. The applicant became a lawful permanent resident of the United States as of March 16, 1989. The applicant claims that he

was born in 1983, that his eighteenth birthday was in November 2001 and that he therefore acquired U.S. citizenship upon his father's naturalization.

The most recent birth certificate submitted by the applicant, issued in 2006 by the Afghan Consulate in Los Angeles lists 1983 as the applicant's date of birth, but itself notes that issuance of birth certificates has not been and remains not to be common practice. Like the certificates previously submitted to the director, this certificate is signed by the Afghan Consul General. The AAO also cannot authenticate the birth certificate, nor can it be given weight in light of the contrary information provided in the applicant's Afghan passports issued in 2004 and 2006 and the remaining immigration and identification documents in the applicant's file, all of which indicate that 1982 is his year of birth.

“There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The burden of proof is on the applicant to establish his claimed citizenship by a preponderance of the evidence. See 8 C.F.R. §§ 320.3(b)(1) and 341.2(c). The applicant has not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.